

Docket No. 2014-15974 HHS
Decision and Order

4. On [REDACTED], ASW [REDACTED] conducted a home visit and reassessment of Appellant's services with Appellant and Appellant's care provider. (Respondent's Exhibit A, page 15; Testimony of ASW [REDACTED]).
5. During that assessment, Appellant reported that no additional services were necessary and that, with respect to bathing, she now only required assistance getting in-and-out of the bathtub. (Respondent's Exhibit A, page 15; Testimony of ASW [REDACTED]).
6. ASW [REDACTED] also observed Appellant walking without a cane. (Respondent's Exhibit A, page 15; Testimony of ASW [REDACTED]).
7. Appellant and ASW [REDACTED] further discussed the number of medications Appellant was taking and the assistance she required to take them, which consisted of the provider setting the medications up and supervising Appellant while she took them. (Respondent's Exhibit A, page 15; Testimony of ASW [REDACTED]).
8. Following the reassessment and home visit, ASW [REDACTED] determined that mobility assistance should be removed and assistance with bathing and taking medications reduced. (Respondent's Exhibit A, page 15; Testimony of ASW [REDACTED]).
9. Mobility assistance was to be removed because Appellant had demonstrated she was independent in that activity. (Respondent's Exhibit A, pages 15, 21-22; Testimony of ASW [REDACTED]).
10. Bathing assistance was to be reduced from [REDACTED] minutes a day, [REDACTED] days a week, to [REDACTED] minutes a day, [REDACTED] days a week, because Appellant only required assistance getting in-and-out of the bathtub. (Respondent's Exhibit A, pages 15, 21-22; Testimony of ASW [REDACTED]).
11. Assistance with taking medications was to be reduced from 6 minutes a day, [REDACTED] days a week, to [REDACTED] minutes a day, [REDACTED] days a week, in order to reflect the number of medications Appellant was taking, her limited need for assistance, and the Reasonable Time Schedule (RTS) utilized by the Department. (Respondent's Exhibit A, pages 15, 21-22; Testimony of ASW [REDACTED]).
12. Overall, Appellant's HHS would be reduced to [REDACTED] hours and [REDACTED] minutes a month, with a total monthly care cost of [REDACTED]. (Respondent's Exhibit A, page 22).

**Docket No. 2014-15974 HHS
Decision and Order**

13. On [REDACTED], the Department sent Appellant written notice that her HHS would be reduced to [REDACTED] per month on [REDACTED] (Respondent's Exhibit A, pages 6-10).
14. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received a request for hearing in this matter. (Respondent's Exhibit A, pages 4-5).

CONCLUSIONS OF LAW

The Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statute, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

Home Help Services (HHS) are provided to enable functionally limited individuals to live independently and receive care in the least restrictive, preferred settings. These activities must be certified by a physician and may be provided by individuals or by private or public agencies.

At the time of the disputed action in this case, Adult Services Manual 101 (5-1-2013) (hereinafter "ASM 101") and Adult Services Manual 120 (5-1-2013) (hereinafter "ASM 120") addressed the issues of what services are included in Home Help Services and how such services are assessed.

For example, ASM 101 provided:

Home Help Payment Services

Home help services are non-specialized personal care service activities provided under the independent living services program to persons who meet eligibility requirements.

Home help services are provided to enable individuals with functional limitation(s), resulting from a medical or physical disability or cognitive impairment to live independently and receive care in the least restrictive, preferred settings.

Home help services are defined as those tasks which the department is paying for through Title XIX (Medicaid) funds. These services are furnished to individuals who are **not** currently residing in a hospital, nursing facility, licensed

Docket No. 2014-15974 HHS
Decision and Order

foster care home/home for the aged, intermediate care facility (ICF) for persons with developmental disabilities or institution for mental illness.

These activities must be certified by a Medicaid enrolled medical professional and may be provided by individuals or by private or public agencies. **The medical professional does not prescribe or authorize personal care services.** Needed services are determined by the comprehensive assessment conducted by the adult services specialist.

Personal care services which are eligible for Title XIX funding are limited to:

Activities of Daily Living (ADL)

- Eating.
- Toileting.
- Bathing.
- Grooming.
- Dressing.
- Transferring.
- Mobility.

Instrumental Activities of Daily Living (IADL)

- Taking medication.
- Meal preparation/cleanup.
- Shopping for food and other necessities of daily living.
- Laundry.
- Housework.

An individual must be assessed with at least one activity of daily living (ADL) in order to be eligible to receive home help services.

Note: If the assessment determines a need for an ADL at a level 3 or greater but these services are not paid for by the department, the individual would be eligible to receive IADL services.

Example: Ms. Smith is assessed at a level 4 for bathing however she refuses to receive assistance. Ms. Smith would be eligible to receive assistance with IADL's if the assessment determines a need at a level 3 or greater.

* * *

Services not Covered by Home Help

Home help services must **not** be approved for the following:

- Supervising, monitoring, reminding, guiding, teaching or encouraging (functional assessment rank 2).
- Services provided for the benefit of others.
- Services for which a responsible relative is **able** and **available** to provide (such as house cleaning, laundry or shopping).
- Services provided by another resource at the same time (for example, hospitalization, MI-Choice Waiver).
- Transportation - See Bridges Administrative Manual (BAM) 825 for medical transportation policy and procedures.
- Money management such as power of attorney or representative payee.
- Home delivered meals.
- Adult or child day care.
- Recreational activities. (For example, accompanying and/or transporting to the movies, sporting events etc.)

Note: The above list is not all inclusive.

ASM 101, pages 1-2, 4-5 of 5

Moreover, ASM 120 states:

Functional Assessment

The **Functional Assessment** module of the **ASCAP** comprehensive assessment is the basis for service planning and for the HHS payment.

Conduct a functional assessment to determine the client's ability to perform the following activities:

Activities of Daily Living (ADL)

- Eating.
- Toileting.
- Bathing.
- Grooming.
- Dressing.
- Transferring.
- Mobility.

Instrumental Activities of Daily Living (IADL)

- Taking Medication.
- Meal Preparation and Cleanup.
- Shopping.
- Laundry.
- Light Housework.

Functional Scale

ADLs and IADLs are assessed according to the following five point scale:

1. Independent

Performs the activity safely with no human assistance.

2. Verbal Assistance

Performs the activity with verbal assistance such as reminding, guiding or encouraging.

3. Some Human Assistance

Performs the activity with some direct physical assistance and/or assistive technology.

4. Much Human Assistance

Performs the activity with a great deal of human assistance and/or assistive technology.

5. Dependent

Does not perform the activity even with human assistance and/or assistive technology.

Home Help payments may only be authorized for needs assessed at the 3 level or greater.

An individual must be assessed with at least one activity of daily living in order to be eligible to receive home help services.

Note: If the assessment determines a need for an ADL at a level 3 or greater but these services are not paid for by the department, the individual would be eligible to receive IADL services.

Example: Ms. Smith is assessed at a level 4 for bathing however she refuses to receive assistance. Ms. Smith would be eligible to receive assistance with IADL's if the assessment determines a need at a level 3 or greater.

See ASM 121, Functional Assessment Definitions and Ranks for a description of the rankings for activities of daily living and instrumental activities of daily living.

* * *

Time and Task

The specialist will allocate time for each task assessed a rank of 3 or higher, based on interviews with the client and provider, observation of the client's abilities and use of the reasonable time schedule (RTS) as a **guide**. The RTS can be found in ASCAP under the Payment module, Time and Task screen. When hours exceed the RTS, rationale **must** be provided.

An assessment of need, at a ranking of 3 or higher, does not automatically guarantee the maximum allotted time allowed by the reasonable time schedule (RTS). **The specialist must assess each task according to the actual time required for it's [sic] completion.**

Docket No. 2014-15974 HHS
Decision and Order

Example: A client needs assistance with cutting up food. The specialist would only pay for the time required to cut the food and not the full amount of time allotted under the RTS for eating.

IADL Maximum Allowable Hours

There are monthly maximum hour limits on all instrumental activities of daily living except medication. The limits are as follows:

- Five hours/month for shopping.
- Six hours/month for light housework.
- Seven hours/month for laundry.
- 25 hours/month for meal preparation.

Proration of IADLs

If the client does not require the maximum allowable hours for IADLs, authorize only the amount of time needed for each task. Assessed hours for IADLs (except medications) must be prorated by **one half** in shared living arrangements where other adults reside in the home, as home help services are **only** for the benefit of the client.

Note: This does not include situations where others live in adjoining apartments/flats or in a separate home on shared property and there is no shared, common living area.

In shared living arrangements, where it can be clearly documented that IADLs for the eligible client are completed separately from others in the home, hours for IADLs do not need to be prorated.

Example: Client has special dietary needs and meals are prepared separately; client is incontinent of bowel and/or bladder and laundry is completed separately; client's shopping is completed separately due to special dietary needs and food is purchased from specialty stores; etc.

ASM 120, pages 2-5 of 7

In this case, following a home visit and reassessment, the Department decided to reduce Appellant's HHS by removing assistance with mobility and reducing assistance with bathing and taking medications.

██████████
Docket No. 2014-15974 HHS
Decision and Order

Appellant disputes the removal of mobility assistance and the reduction of assistance with taking medications, and, in doing so, bears the burden of proving by a preponderance of the evidence that the Department erred.

For the reasons discussed below, this Administrative Law Judge finds that Appellant and her representative have not met their burden of proof and the Department's actions should therefore be affirmed.

Taking Medications

As discussed above, the Department decided to reduce assistance with taking medications from 6 minutes a day, 7 days a week, to 2 minutes a day, 7 days a week, in order to reflect the number of medications Appellant was taking, her limited need for assistance, and the RTS utilized by the Department.

With respect to such assistance, Adult Services Manual 121 (5-1-2013) (hereinafter "ASM 121"), page 4 of 6, states:

Taking Medication - Taking prescribed and/or over the counter medications

- 1 No assistance required.
- 2 Client is able to take all medications but needs reminding or direction.
- 3 Client is able to take all medication if someone assists in measuring dosages or prepares administration schedule.
- 4 Client is able to take some medication if another person assists in preparation, but needs someone to assist in administering other medications.
- 5 Totally dependent on another. Does not take medication unless someone assists in administering.

Here, the number of medications Appellant was taking, over twelve per day, and the assistance Appellant requires in taking them, preparation and supervision, are undisputed.

Given those needs and the above policy, Appellant was properly ranked a "3" in taking medications and ASW ██████████ also credibly testified that the new time authorized was generated from applying a ranking of "3" to the RTS discussed in the above policy and used by Department.

Docket No. 2014-15974 HHS
Decision and Order

Appellant and her representative argue that the new time is insufficient, but have failed to meet their burden of proof. They offer no justification for going over the RTS in this case and appear to seek HHS for the supervision and direction that Appellant requires, services which are not covered by HHS.

Mobility

As discussed above, the Department also decided to remove mobility assistance in this case because of ASW [REDACTED] observations that Appellant was independent in that activity.

With respect to mobility assistance, ASM 121, page 4 of 6, states:

Mobility - Walking or moving around inside the living area, changing locations in a room, assistance with stairs or maneuvering around pets, or obstacles including uneven floors.

- 1 No assistance required even though the client may experience some difficulty or discomfort. Completion of the task poses no risk to safety.
- 2 Client is able to move independently with only reminding or encouragement. For example, needs reminding to lock a brace, unlock a wheelchair or to use a cane.
- 3 Minimal hands-on assistance required for specific maneuvers with a wheelchair, negotiating stairs or moving on certain surfaces. Without the use of a walker or pronged cane, client would need physical assistance.
- 4 Requires hands-on assistance from another person with most aspects of mobility. Would be at risk if unassisted.
- 5 Totally dependent on other for all mobility. Must be carried, lifted or pushed in a wheelchair or gurney at all times.

Here, Appellant testified that she uses a cane, and used the cane during the home visit, for mobility purposes and that her provider also sometimes physically escorts her around the house and in-and-out of chairs, the bed, and the bathtub.

Docket No. 2014-15974 HHS
Decision and Order

However, Appellant also testified that she only uses a straight cane, which would not justify a ranking of "3" in mobility on its own, and this Administrative Law Judge finds ASW [REDACTED] testimony and notes to be more credible regarding what occurred during the home visit. Moreover, Appellant and representative appear to be confusing mobility assistance with transferring assistance, which encompasses assistance with moving from one position to another, see ASM 121, page 4 of 6, and for which Appellant is also authorized HHS.

Accordingly, this Administrative Law Judge also finds that Appellant has failed to meet her burden of proving by a preponderance of the evidence that the Department erred in removing her assistance with mobility.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that, the Department properly decided to reduce Appellant's HHS.

IT IS THEREFORE ORDERED THAT:

The Department's decision is **AFFIRMED**.

Steven Kibit

Steven J. Kibit
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

SK/db

cc: [REDACTED]

***** NOTICE *****

The Michigan Administrative Hearing System may order a rehearing on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. The Michigan Administrative Hearing System will not order a rehearing on the Department's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original request. The Appellant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.